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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Dos Perros Consulting LLC,

Plaintiff,

v.

FlexCare LLC,

Defendant.

Case No:

**COMPLAINT FOR:
(1) COPYRIGHT
INFRINGEMENT UNDER
17 U.S.C. §501**

DEMAND FOR JURY TRIAL

Plaintiff Dos Perros Consulting LLC ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against defendant FlexCare LLC ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §101 *et seq.*

2. Donald Burns ("*Burns*") created a photograph of a Phoenix, Arizona sunset (the "*Photograph*") in which Plaintiff owns the rights and licenses for various uses including online and print publications.

3. Defendant owns and operates a social media account on

1 www.facebook.com known as “@FlexCare” (the “*Account*”).

2 4. Defendant, without permission or authorization from Plaintiff, actively
3 copied and displayed the Photograph on the Account and engaged in this misconduct
4 knowingly and in violation of the United States copyright laws.

5 **PARTIES**

6 5. Plaintiff Dos Perros Consulting LLC is an Arizona limited liability
7 company and maintains a principal place of business in Maricopa County, Arizona.

8 6. Upon information and belief, defendant FlexCare LLC, is a California
9 limited liability company with a principal place of business at 532 Gibson Drive,
10 Suite 100, Roseville in Placer County, California.

11 **JURISDICTION AND VENUE**

12 7. This Court has subject matter jurisdiction over the federal copyright
13 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

14 8. This Court has personal jurisdiction over Defendant because it
15 maintains its principal place of business in California.

16 9. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does
17 business in this Judicial District and/or because a substantial part of the events or
18 omissions giving rise to the claim occurred in this Judicial District.

19 **FACTS COMMON TO ALL CLAIMS**

20 **A. Plaintiff's Copyright Ownership**

21 10. Plaintiff is a professional photography company which is the legal and
22 rightful owner of certain photographs which Plaintiff commercially licenses.

23 11. Plaintiff has invested significant time and money in building Plaintiff's
24 photograph portfolio.

25 12. Plaintiff has obtained active and valid copyright registrations from the
26 United States Copyright Office (the “*USCO*”) which cover many of Plaintiff's
27 photographs while many others are the subject of pending copyright applications.
28

1 13. Plaintiff's photographs are original, creative works in which Plaintiff
2 owns protectable copyright interests.

3 14. On September 1, 2004, Burns first published the Photograph. A copy
4 of the Photograph is attached hereto as Exhibit 1.

5 15. Burns published the Photograph by commercially licensing it to third-
6 party media companies for the purpose of display and/or public distribution.

7 16. In creating the Photograph, Burns personally selected the subject
8 matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used
9 to capture the image and made each and every artistic determination necessary for
10 the creation of the work.

11 17. On May 13, 2010, the Photograph was registered by the USCO under
12 Registration No. VA 1-721-024.

13 18. Burns created the Photograph with the intention of it being used
14 commercially and for the purpose of display and/or public distribution.

15 19. Plaintiff acquired the rights in and to the Photograph by way of written
16 assignment.

17 **B. Defendant's Infringing Activity**

18 20. Defendant is the registered owner of the Account and is responsible for
19 its content.

20 21. Defendant is the operator of the Account and is responsible for its
21 content.

22 22. The Account is a key component of Defendant's popular and lucrative
23 commercial enterprise.

24 23. Upon information and belief, Defendant has not implemented adequate
25 internal policies to verify copyright ownership before content use, indicating a gross
26 negligence in legal compliance, which is essential for a company with Defendant's
27 reach, capabilities, and level of sophistication.
28

24. Upon information and belief, Defendant's internal policies, if any, are either not designed to verify copyright ownership before content use or are systematically ignored, indicating a willful, recurring disregard for copyright compliance.

25. Defendant's failure to adopt or effectively enforce internal copyright policies, if any, indicates *de facto* willful infringement.

26. On or about April 16, 2024, without permission or authorization from Plaintiff, Defendant volitionally copied and displayed the Photograph on the Account as part of an on-line post at URL: <https://www.facebook.com/FlexCare/posts/pfbid02vRddnKkSit7wZVLSue2c2WfNHBkvVHmtrLuKViREy4WNF73XyAM3i4YN4CEHSP1yl>. A copy of a screengrab depicting the Infringement is attached hereto as Exhibit 2.

27. The Photograph was copied and stored by Defendant to URL: https://scontent-iad3-1.xx.fbcdn.net/v/t39.30808-6/464606419_9017005081643565_2576686847402316557_n.jpg?_nc_cat=110&ccb=1-7&_nc_sid=127cfc&_nc_ohc=y-4olMdT0U0Q7kNvgGdpWJI&_nc_zt=23&_nc_ht=scontent-iad3-1.xx&_nc_gid=AG3qZdkyZr83PddPl6vfp7I&oh=00_AYDzGtHGO7idLGYZATRSc8uPEG_DMDrOpy3fVesidfjx0A&oe=67283801.

28. The Infringement is a copy of Plaintiff's original image that was directly copied and displayed on the Account by Defendant.

29. Plaintiff first observed the Infringement on October 30, 2024.

30. Upon information and belief, the Photograph was copied and displayed by Defendant without license or permission, thereby infringing on Plaintiff's copyrights in and to the Photograph.

31. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed tangible medium of expression that was sufficiently permanent or stable to

1 permit it to be communicated for a period of more than a transitory duration and
2 therefore constitutes a specific infringement.

3 32. Upon information and belief, Defendant takes an active and pervasive
4 role in the content posted on its Account, including, but not limited to copying,
5 posting, selecting, commenting on, and displaying images including but not limited
6 to Plaintiff's Photograph.

7 33. Upon information and belief, the Photograph was willfully and
8 volitionally posted to the Account by Defendant.

9 34. Upon information and belief, Defendant was aware of facts or
10 circumstances from which the determination regarding the Infringement was
11 apparent. Defendant cannot claim that it was not aware of the infringing activities,
12 including the specific Infringement which forms the basis of this complaint, since
13 such a claim would amount to only willful blindness to the Infringement on the part
14 of Defendant.

15 35. Upon information and belief, Defendant engaged in the Infringement
16 knowingly and in violation of applicable United States copyright laws.

17 36. Upon information and belief, Defendant had complete control over and
18 actively reviewed and monitored the content posted on the Account.

19 37. Upon information and belief, Defendant has the legal right and ability
20 to control and limit the infringing activities on its Account and exercised and/or had
21 the right and ability to exercise such right.

22 38. Upon information and belief, Defendant has received a financial benefit
23 directly attributable to the Infringement.

24 39. Upon information and belief, the Infringement increased traffic to the
25 Account and, in turn, caused Defendant to realize an increase in its business
26 revenues.

27 40. Upon information and belief, a large number of people have viewed the
28

1 unlawful copy of the Photograph on the Account.

2 41. Upon information and belief, Defendant at all times had the ability to
3 stop the reproduction and display of Plaintiff's copyrighted material.

4 42. Defendant's use of the Photograph harmed the actual market for the
5 Photograph.

6 43. Defendant's use of the Photograph, if widespread, would harm
7 Plaintiff's potential market for the Photograph.

8 44. On November 11, 2024, Plaintiff, via counsel, served a letter seeking
9 to address the complaints contained herein concerning Defendant's infringement of
10 Plaintiff's rights-protected work.

11 45. Thereafter, on December 11, 2024, Plaintiff, via counsel, served a
12 follow up letter seeking to address said complaints directly with Defendant in
13 attempt to avoid litigation.

14 46. Despite Plaintiff's efforts and willingness to address Defendant's
15 infringing activity, the parties failed to resolve the instant matter, and Plaintiff was
16 forced to seek judicial intervention for Defendant's infringing activity.

17 47. As a result of Defendant's misconduct, Plaintiff has been substantially
18 harmed.

19 **FIRST COUNT**

20 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

21 48. Plaintiff repeats and incorporates by reference the allegations contained
22 in the preceding paragraphs, as though set forth in full herein.

23 49. The Photograph is an original, creative work in which Plaintiff owns a
24 valid copyright.

25 50. The Photograph is properly registered with the USCO and Plaintiff has
26 complied with all statutory formalities under the Copyright Act and under
27 regulations published by the USCO.
28

1 51. Plaintiff has not granted Defendant a license or the right to use the
2 Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in
3 the copyright to Defendant.

4 52. Without permission or authorization from Plaintiff and in willful
5 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
6 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
7 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
8 copyrights.

9 53. Defendant's reproduction of the Photograph and display of the
10 Photograph constitutes willful copyright infringement.

11 54. Upon information and belief, Defendant willfully infringed upon
12 Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
13 Defendant used, published, communicated, posted, publicized, and otherwise held
14 out to the public for commercial benefit, Plaintiff's original and unique Photograph
15 without Plaintiff's consent or authority.

16 55. As a result of Defendant's violations of Title 17 of the U.S. Code,
17 Plaintiff is entitled to an award of actual damages and disgorgement of all of
18 Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504
19 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
20 statutory damages against Defendant for each infringement pursuant to 17 U.S.C. §
21 504(c).

22 56. As a result of the Defendant's violations of Title 17 of the U.S. Code,
23 the court in its discretion may allow the recovery of full costs as well as reasonable
24 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

25 57. As a result of Defendant's violations of Title 17 of the U.S. Code,
26 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of
27 Plaintiff's copyright pursuant to 17 U.S.C. § 502.
28

JURY DEMAND

58. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and therefore award damages and monetary relief as follows:

- a. finding that Defendant infringed Plaintiff's copyright interest in and to the Photograph by copying and displaying it without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504(b) in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre-judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

1 DATED: January 10, 2025

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